

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

EVESTER THARP, AIS # 196360,	)	
	)	
	)	
Petitioner,	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	1:07-CV-172-WKW (WO)
	)	
KENNETH JONES, et al.,	)	
	)	
Respondents.	)	

**SUPPLEMENTAL ANSWER**

**II.**

**Petitioner Tharp's present claims (continued)**

4.1 In his *Petition For Writ Of Habeas Corpus*, Tharp raised the following additional claim:

e) whether his (Tharp's) Sixth Amendment right to a fair trial was denied by the composition of his jury.

See Tharp's *Petition For Writ of Habeas Corpus*, at p. 9.

**III.**

**Respondents' defenses (continued)**

8.1 Respondents deny that Tharp's Sixth Amendment right to a fair trial was denied by the composition of his jury.

11.1 Respondents admit that Tharp has also exhausted the claims set out hereinabove in *paragraphs 4.1 e*).

V.

**Respondents' arguments (continued)**

In support of their defenses, Respondents submit the following additional argument:

B.

*MERITS (continued)*

**SELECTION OF THE JURY VENIRE ISSUE**

22. Tharp also contend that, by selecting its jury pools from the rolls of those in Houston County with either a driver's license, or a state-issued identity card, the Houston County Circuit Court violates the right to serve on a jury of the Houston County citizens who might not have the money to purchase those two particular forms of identification. In disposing of this -- what is commonly known as a "fair cross-section" -- issue on direct appeal, the Alabama Court of Criminal Appeals relied on the case of Acklin v. State, 790 So. 2d 975, 985 (Ala. Crim. App. 2000). [See **Respondents' Exhibit 4**] In turn, the Acklin decision relied on the three-part test set out in United States Supreme Court's decision in Duren v. Missouri, 439 U. S. 357, 99 S. Ct. 664, 58 L. Ed. 2d 579 (1979), to wit:

(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that the underrepresentation is due to systematic exclusion of the group in the jury-selection process.

439 U. S. at 364, 99 S. Ct. at 668, 58L. Ed. 2d at 587.

23. Therefore, it appears that the Alabama Court of Criminal Appeals both 1) applied the *correct* standard to Tharp's fair cross-section" claim, and 2) *applied* the standard correctly. Because the state trial court applied the proper review to Tharp's "fair cross-section" claim, the state court's determination is entitled to a presumption of correctness under 28 U. S. C. Section 2254(d)(1).

WHEREFORE, PREMISES CONSIDERED, this Court should deny the petition and the relief requested herein by Tharp.

Respectfully submitted,

TROY KING, KIN047

*Attorney General*

By:

/s/ Stephen N. Dodd

STEPHEN N. DODD, ASB-6492-D65S

*Assistant Attorney General*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of May, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: Evester Tharp, AIS #196360, 100 Warrior Lane, Bessemer, AL 35023-7299.

**s/ Stephen N. Dodd**  
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